

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TOWAKI KOMATSU,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

20-CV-7046 (ER)

ORDER OF SERVICE

EDGARDO RAMOS, United States District Judge:

Plaintiff, appearing *pro se*, brings this action under 42 U.S.C. §§ 1983, 1985, and 1988, and state law, alleging that Defendants unlawfully prevented him from attending two public meetings. By order dated September 25, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).

**DISCUSSION**

**A. Service on Named Defendants**

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summonses and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summonses and complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date the summonses are issued. If the complaint is not served within that time, Plaintiff should request an

extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants the City of New York; NYPD Inspector Howard Redmond; former NYPD Lieutenant Ralph Nieves; NYPD Officer Karl Pfeffer; NYPD Officer Andrew Berkowitz; NYPD Officer Cruz; NYPD Officer Hansen; NYPD Officer Christopher Fowler; NYPD Officer Lance; NYPD Officer Juanita Holmes; NYPD Lieutenant Richard Mantellino; Mayor Bill de Blasio; and former NYPD Commissioner James O'Neill through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

#### **B. John Doe Defendant**

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the New York City Police Department (NYPD) to identify the "NYPD Officer John Doe8-30-17a" whom Plaintiff describes in the complaint. (*See* ECF No. 5, at 11 ¶ 5.) It is therefore ordered that the New York City Law Department, which is the attorney for and agent of the NYPD, shall ascertain the identity of the John Doe defendant whom Plaintiff

seeks to sue here and the address where this defendant may be served. The New York City Law Department shall provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file a second amended complaint naming the John Doe defendants. The second amended complaint will replace, not supplement, the amended complaint. A Second Amended Complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed a second amended complaint, the Court will screen the second amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe defendant and deliver all documents necessary to effect service to the U.S. Marshals Service.

### **CONCLUSION**

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is further instructed to complete the USM-285 forms with the addresses for City of New York; NYPD Inspector Howard Redmond; former NYPD Lieutenant Ralph Nieves; NYPD Officer Karl Pfeffer; NYPD Officer Andrew Berkowitz; NYPD Officer Cruz; NYPD Officer Hansen; NYPD Officer Christopher Fowler; NYPD Officer Lance; NYPD Officer Juanita Holmes; NYPD Lieutenant Richard Mantellino; Mayor Bill de Blasio; and former NYPD Commissioner James O'Neill, issue summonses, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is also directed to mail a copy of this order and the complaint to the New York City Law Department at: 100 Church Street, New York, NY 10007. A Second Amended Complaint form is attached to this order.

SO ORDERED.

Dated: September 29, 2020  
New York, New York



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EDGARDO RAMOS  
United States District Judge

**DEFENDANTS AND SERVICE ADDRESSES**

1. City of New York  
100 Church Street  
New York, NY 10007
2. NYPD Inspector Howard Redmond  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007
3. NYPD Lieutenant Ralph Nieves  
Tax # 902104  
New York Police Department  
1 Police Plaza  
Room 110C  
New York, NY 10038
4. NYPD Officer Karl Pfeffer  
Officer ID # 48458  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007
5. NYPD Officer Andrew Berkowitz  
Badge # 7141  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007
6. NYPD Officer Cruz  
Badge # 751  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007
7. NYPD Officer Hansen  
Badge # 4028  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007
8. NYPD Officer Christopher Fowler  
Badge # 3185  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007

9. NYPD Officer Lance  
Badge # 245  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007
10. NYPD Officer Juanita Holmes  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007
11. NYPD Lieutenant Richard Mantellino  
NYC Mayor Security Detail  
City Hall  
New York, NY 10007
12. Mayor Bill de Blasio  
City Hall  
New York, NY 10007
13. James O'Neill, former NYPD Commissioner  
New York Police Department  
1 Police Plaza  
Room 110C  
New York, NY 10038

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

-against-

\_\_\_\_ CV \_\_\_\_  
(Include case number if one has been  
assigned)

**SECOND AMENDED  
COMPLAINT**

Do you want a jury trial?

☐ Yes ☐ No

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Write the full name of each defendant. If you need more  
space, please write "see attached" in the space above and  
attach an additional sheet of paper with the full list of  
names. The names listed above must be identical to those  
contained in Section II.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

## I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- ☐ **Federal Question**
- ☐ **Diversity of Citizenship**

### A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

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### B. If you checked Diversity of Citizenship

#### 1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, \_\_\_\_\_, is a citizen of the State of  
(Plaintiff's name)

\_\_\_\_\_  
(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

\_\_\_\_\_.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.



If the defendant is an individual:

The defendant, \_\_\_\_\_, is a citizen of the State of  
(Defendant's name)

\_\_\_\_\_  
or, if not lawfully admitted for permanent residence in the United States, a citizen or  
subject of the foreign state of

\_\_\_\_\_  
If the defendant is a corporation:

The defendant, \_\_\_\_\_, is incorporated under the laws of  
the State of \_\_\_\_\_

and has its principal place of business in the State of \_\_\_\_\_

or is incorporated under the laws of (foreign state) \_\_\_\_\_

and has its principal place of business in \_\_\_\_\_.

If more than one defendant is named in the complaint, attach additional pages providing  
information for each additional defendant.

## II. PARTIES

### A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional  
pages if needed.

First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

**B. Defendant Information**

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First NameLast Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, CityStateZip Code

Defendant 2:

First NameLast Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, CityStateZip Code

Defendant 3:

First NameLast Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, CityStateZip Code

Defendant 4:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

### III. STATEMENT OF CLAIM

Place(s) of occurrence:

Date(s) of occurrence:

**FACTS:**

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

[illegible]

**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

**IV. RELIEF**

State briefly what money damages or other relief you want the court to order.

**V. PLAINTIFF'S CERTIFICATION AND WARNINGS**

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

_____		_____	
Dated		Plaintiff's Signature	
_____			
First Name	Middle Initial	Last Name	
_____			
Street Address			
_____			
County, City		State	Zip Code
_____			
Telephone Number		Email Address (if available)	
_____			

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes   ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.



**United States District Court  
Southern District of New York**

## **Pro Se (Nonprisoner) Consent to Receive Documents Electronically**

Parties who are not represented by an attorney and are not currently incarcerated may choose to receive documents in their cases electronically (by e-mail) instead of by regular mail. Receiving documents by regular mail is still an option, but if you would rather receive them only electronically, you must do the following:

1. Sign up for a PACER login and password by contacting PACER<sup>1</sup> at [www.pacer.uscourts.gov](http://www.pacer.uscourts.gov) or 1-800-676-6856;
2. Complete and sign this form.

If you consent to receive documents electronically, you will receive a Notice of Electronic Filing by e-mail each time a document is filed in your case. After receiving the notice, you are permitted one “free look” at the document by clicking on the hyperlinked document number in the e-mail.<sup>2</sup> Once you click the hyperlink and access the document, you may not be able to access the document for free again. After 15 days, the hyperlink will no longer provide free access. Any time that the hyperlink is accessed after the first “free look” or the 15 days, you will be asked for a PACER login and may be charged to view the document. For this reason, *you should print or save the document during the “free look” to avoid future charges.*

### **IMPORTANT NOTICE**

Under Rule 5 of the Federal Rules of Civil Procedure, Local Civil Rule 5.2, and the Court’s Electronic Case Filing Rules & Instructions, documents may be served by electronic means. If you register for electronic service:

1. You will no longer receive documents in the mail;
2. If you do not view and download your documents during your “free look” and within 15 days of when the court sends the e-mail notice, you will be charged for looking at the documents;
3. This service does *not* allow you to electronically file your documents;
4. It will be your duty to regularly review the docket sheet of the case.<sup>3</sup>

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<sup>1</sup> Public Access to Court Electronic Records (PACER) ([www.pacer.uscourts.gov](http://www.pacer.uscourts.gov)) is an electronic public access service that allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator over the internet.

<sup>2</sup> You must review the Court’s actual order, decree, or judgment and not rely on the description in the email notice alone. See ECF Rule 4.3

<sup>3</sup> The docket sheet is the official record of all filings in a case. You can view the docket sheet, including images of electronically filed documents, using PACER or you can use one of the public access computers available in the Clerk’s Office at the Court.

## CONSENT TO ELECTRONIC SERVICE

I hereby consent to receive electronic service of notices and documents in my case(s) listed below. I affirm that:

1. I have regular access to my e-mail account and to the internet and will check regularly for Notices of Electronic Filing;
2. I have established a PACER account;
3. I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;
4. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address, or if I wish to cancel this consent to electronic service;
5. I understand that I must regularly review the docket sheet of my case so that I do not miss a filing; and
6. I understand that this consent applies only to the cases listed below and that if I file additional cases in which I would like to receive electronic service of notices of documents, I must file consent forms for those cases.

### Civil case(s) filed in the Southern District of New York:

**Note:** This consent will apply to all cases that you have filed in this court, so please list all of your pending and terminated cases. For each case, include the case name and docket number (for example, John Doe v. New City, 10-CV-01234).

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Name (Last, First, MI)

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Address

City

State

Zip Code

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Telephone Number

E-mail Address

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Date

Signature

### Return completed form to:

Pro Se Intake Unit (Room 200)  
500 Pearl Street  
New York, NY 10007